

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-822

EDDIE THOMPSON, JR.,

APPELLANT,

vs.

KENTON COUNTY BOARD OF ELECTION
COMMISSION, ET AL.,

APPELLEES.

On Appeal From The Court Of Appeals Of Kentucky

It Is Requested That This Appeal Be Advanced

JURISDICTIONAL STATEMENT

EDDIE THOMPSON, JR., Pro Se
736 Highland Avenue
Covington, Kentucky 41011
1-606-491-6278

I certify that a copy of the foregoing appeal has been served by the United States mail, upon:

Mr. Robert Ruberg, P.O. Box 187, 600 Greenup Street,
Covington, Kentucky

Mr. Joseph Condit, City Hall, Covington, Kentucky

Mr. Thomas C. Smith, Suite 400, General Savings Building,
1 West Sixth St., Covington, Kentucky

Mr. William Martin, 242 East Robbins Street, Covington,
Kentucky

Mr. Richard S. Nelson, 11 West Sixth Street, Covington,
Kentucky

Judge Daniel J. Goodenough, City Hall, Covington,
Kentucky

this day of November, 1975

.....
Eddie Thompson, Jr., Pro Se

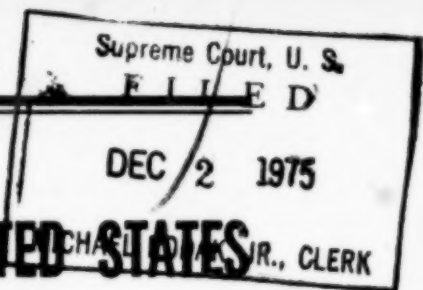


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IN THE
SUPREME COURT OF THE UNITED STATES
 OCTOBER TERM, 1975

 No. _____

EDDIE THOMPSON, JR.,
 vs.
 KENTON COUNTY BOARD OF ELECTION
 COMMISSION, ET AL.,
 APPELLANT,
 APPELLEES.

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Court of Appeals of Kentucky, on page 7a herein, was entered on September 19, 1975; petition for rehearing was denied on October 29, 1975, and the Court of Appeals issued its mandate on that date.

JURISDICTION

Jurisdiction of this court is invoked pursuant to 28 USC 1257 (2), this being an appeal which draws into question the validity of any Kentucky Revised Statute that permits an election to be rigged in a city of second class with a city manager form of government, on the grounds that it is repugnant to the Constitution of the United States.

KRS 120.055 sets out procedure for contest of primary election. Mr. Wood has already admitted several irregularities in this election. Defendants' acts were done to deprive Thompson and others of their constitutional rights.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Fourteenth Amendment to the Constitution of the United States.

This case also involves 28 USC 1981, 1983; KRS 117.275, KRS 117.285, KRS 117.295, KRS 118.015 to KRS 118.035, KRS 118.105 to KRS 118.255, KRS 119.115, KRS 119.285, KRS 120.055, KRS 120.065, KRS 120.075, and KRS 120.095.

QUESTIONS PRESENTED

1. Can one with an interest in the case serve as judge.
2. Is it not illegal for the county clerk to destroy the original return sheets less than a week after an election.
3. Is the right to contest a primary election given by statutory authority, expressly or by implication.

STATEMENT

Appellant Eddie Thompson, Jr., was a candidate for city commissioner in the City of Covington, Kentucky. After receiving conflicting tabulations from the county clerk's office, Eddie Thompson, Jr., Charles Meyers and Louis Gorman asked for a recount, which was granted.

The recount revealed that, 1. Mr. Wood had all the keys to the machines, 2. Some seals had been changed, 3. Some seals were still broken, 4. Voting machines had

been reset, 5. Some return sheets had blank lines, 6. Entries had been made in pencil and had been erased, and 7. Mr. Wood said he had thrown out the original return sheets.

As a result of these violations of the election laws of Kentucky, Eddie Thompson, Jr., filed suit in Kenton Circuit Court. Mr. Louis Gorman filed a motion to intervene in the suit. (See pages 6, 7, and 8)

The circuit court clerk refused to follow the election laws as pointed out in KRS 120.055; and Judge Goodenough, who was a candidate in the election, was arbitrarily selected to preside over the case.

When Judge Goodenough first set the date for trial, he omitted Thompson's name from the order.

When Judge Goodenough called court to order, he refused to permit Thompson to present his case. Instead, he let the defendants present untimely motions to dismiss. Judge Goodenough refused to hear Mr. Louis Gorman's motion to intervene in this case. He summarily ruled on untimely motions to dismiss citing *Dodge v. Johnson*, (1925) 276 SW 989.

"The right of a candidate to contest a primary election is one that must be established by statutory authority, given either expressly or by implication."

However, KRS 120.055 outlines the procedure that must be followed for the contest of a primary election.

This suit raises serious questions under both the due process clause and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Timely notice of appeal to this court was filed in the Court of Appeals of Kentucky on November 3, 1975. As the Court of Appeals of Kentucky explicitly rejected ap-

pellant's challenge to any Kentucky Revised Statute that permits an election to be fixed by fraud, this matter is appropriately brought to this court by appeal.

In the event that the court does not consider appeal the proper mode of review, appellant requests that the papers whereupon this appeal be taken, be regarded and acted upon as a petition for a writ of certiorari pursuant to 28 USC 2103.

ANSWERS TO QUESTIONS PRESENTED

1. Can one with an interest in the case serve as judge?

The answer is simply no. "A fair trial as required by due process requires not only an absence of actual bias on the part of the judge, but also that no man be a judge in his own case or try a case where he has an interest in the outcome." . . . "To perform its high function in the best way, Justice must satisfy the appearance of Justice." *Re Murchison*, 349 US 133, 75 S Ct 623, 99 LEd 942.

2. Is it not illegal for the county clerk to destroy the original return sheets less than a week after an election?

KRS 119.235 provides a penalty for alteration, suppression or destruction of stub book, *return* or certificate of election.

KRS 119.285 provides that "Irregularities or defects in the mode of convening or conducting an election shall constitute no defense to a prosecution for violation of the election law."

KRS 119.275 provides that "Any person who . . . aide in the commission of any of the offenses named in this chapter shall incur the penalty provided for committing such offense."

3. Is the right to contest a primary election given by statutory authority, expressly or by implication?

KRS 120.055 outlines the procedure that must be followed. Defendants did not file any timely authority to dismiss. Their reliance on KRS 118.105 (4) has no bearing on the *contesting of an election*. KRS 118.105 pertains only to *nominations by political parties*.

No right is more precious than the right of suffrage. It involves "matter close to the core of our Constitutional system." Free and honest elections are the very foundation of our republican form of government. *Truly, other rights, even the most basic are illusory if the right to vote is undermined*. Because of these compelling considerations, the right of suffrage, whether in an election for state or federal office is one that qualifies under the equal protection clause of the Fourteenth Amendment for the protection from impairment, when such impairment resulted from dilution by a false tally, or a refusal to count votes from arbitrarily selected precincts or by a stuffing of the ballot box.

This was bluntly stated in *Reynolds v. Sims*, (1964) 377 US 533, 555, 84 S Ct 1362, 1367, 12 LEd 2d 506. The Constitution of the United States protects the right of all qualified citizens to vote in state as well as in federal elections . . . The right to vote can neither be denied . . . nor diluted by ballot box stuffing . . .

While it may be that the Constitution provides the right to vote only in federal elections and the right to vote in purely state elections must be derived from state constitutions or law, (See: *Fortson v. Morris*, (1966) 385 US 231, 87 S Ct 446, 17 LEd 2d 330) it is clear that where states provide for the election of officers, that right, as we have indicated, is protected against dilution involving "state action" under the Equal Protection Clause of the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

.....
EDDIE THOMPSON, JR., Pro Se

APPENDIX

KENTON CIRCUIT COURT
THIRD DIVISION

No. 28574

EDDIE THOMPSON, JR.,
PLAINTIFF,

vs.

KENTON COUNTY BOARD OF ELECTION
COMMISSION, et al.,
DEFENDANTS.

AFFIDAVIT IN SUPPORT OF MOTION

(Filed July 1, 1975)

Now comes Louis Gorman, the affiant, and states on oath:

1. That the Honorable Judge Goodenough did not permit Eddie Thompson, Jr., an opportunity to present his case.
2. That I had filed a timely motion to intervene as a plaintiff, but court did not hear the motion.
3. That Mr. Simpson, a defendant in this case, was not present at the trial as was stated in Judge Goodenough order of dismissal.
4. That the court did not permit any evidence to be heard.
5. That Judge Goodenough's sitting on the bench to hear this case was in conflict of interest.

2a

6. That Mr. Martin's, Mr. Hunter's, Mr. Simpson's, and Mr. Condit's illegal presence at the vote tabulation was an irregularity.

7. That fixing an election is fraud.

8. That Judge Goodenough was prejudiced and biased. Affiant further saith not.

/s/ LOUIS GORMAN

Subscribed and sworn to before me this 1st day of July, 1975.

/s/ JAMES JOHNSON
Notary Public

Commission Expires 11/8/78

3a

KENTON CIRCUIT COURT
THIRD DIVISION

No. 28574

EDDIE THOMPSON, JR.,
PLAINTIFF,

vs.

KENTON COUNTY BOARD OF ELECTION
COMMISSION, et al.,
DEFENDANTS.

AFFIDAVIT IN SUPPORT OF MOTION

Now comes Charles Myers, the affiant, and states on oath:

1. That the Honorable Judge Goodenough did not permit Eddie Thompson, Jr., an opportunity to present his case.

2. That Louis Gorman had filed a timely motion to intervene as a plaintiff, but court did not hear the motion.

3. That Mr. Simpson, a defendant in this case, was not present at the trial as was stated in Judge Goodenough's order of dismissal.

4. That the court did not permit any evidence to be heard.

5. That Judge Goodenough sitting on the bench to hear this case was in conflict of interest.

6. That Mr. Hunter's, Mr. Martin's, Mr. Simpson's, and Mr. Condit's illegal presence at the vote tabulation was an irregularity.

4a

7. That fixing an election is fraud.
8. That Judge Goodenough was prejudiced and biased.

Affiant further saith not.

/s/ CHARLES MYERS

Subscribed and sworn to before me this 1st day of July,
1975.

/s/ LOUIS M. GORMAN
Notary Public

Commission Expires 10/22/75

KENTON CIRCUIT COURT
THIRD DIVISION

No. 28574

EDDIE THOMPSON, JR.,
PLAINTIFF,

vs.

KENTON COUNTY BOARD OF ELECTION
COMMISSION, et al.,
DEFENDANTS.

AFFIDAVIT IN SUPPORT OF MOTION

(Filed July 1, 1975)

Now comes Isiah Smith, the affiant, and states on oath:

5a

1. That the Honorable Judge Goodenough did not permit Eddie Thompson, Jr., an opportunity to present his case.

2. That Louis Gorman had filed a timely motion to intervene as a plaintiff, but court did not hear the motion.

3. That Mr. Simpson, a defendant in this case, was not present at the trial as was stated in Judge Goodenough's order of dismissal.

4. That the court did not permit any evidence to be heard.

5. That Judge Goodenough sitting on the bench to hear this case was in conflict of interest.

6. That Mr. Simpson's, Mr. Hunter's, Mr. Martin's, and Mr. Condit's illegal presence at the vote tabulation was an irregularity.

7. That fixing an election is fraud.

8. That Judge Goodenough was prejudiced and biased.

Affiant further saith not.

/s/ ISIAH SMITH

Subscribed and sworn to before me this 1st day of July,
1975.

/s/ LOUIS J. GORMAN
Notary Public

Commission Expires 10/22/75

6a

MANDATE

THE COMMONWEALTH OF KENTUCKY
THE COURT OF APPEALS
75 Term — September 19, 1975

Eddie Thompson, Jr.,

vs.

Kenton County Board of Election Commission, Et Al.

Appeal from a judgment of the Kenton Circuit Court

CA #28573, File #75-613

The Court being sufficiently advised, it seems there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed; and that the appellee recover of the appellant 10 percent damages on the amount of the judgment superseded herein; which is ordered to be certified to said court.

It is further considered that the appellees recover of the appellant their cost herein expended.

A copy—Attest:

FRANCIS JONES MILLS, C. C. A.
By /s/ FRANCES JONES MILLS, D. C.

Issued October 29, 1975

APPELLANT'S PETITION FOR REHEARING DENIED — 10-29-75

7a

COURT OF APPEALS OF KENTUCKY

75-613

EDDIE THOMPSON, JR.,
APPELLANT,

v.

KENTON COUNTY BOARD OF ELECTION
COMMISSION ET AL.,
APPELLEES.

Appeal from Kenton Circuit Court
Honorable Daniel J. Goodenough, Judge
Civil Action No. 28573

**OPINION OF THE COURT BY COMMISSIONER
CATINNA AFFIRMING**

(Rendered September 19, 1975)

Eddie Thompson, Jr., appeals from an order of the Kenton Circuit Court, Third Division, dismissing his action contesting the primary election of city commissioners for the City of Covington, a second-class city with a city-manager form of government.

Thompson was an unsuccessful candidate for nomination to the office of city commissioner for the City of Covington in a primary election held for that office on May 27, 1975. Subsequent to his defeat, he filed a contest action against the Kenton County Board of Election Commission and individual members of the board, seeking to have the primary election invalidated. Upon motion of the defendants, this action was dismissed on the ground that

there was no statute permitting the contest of such an election.

The right of a candidate to contest a primary election is one that must be established by statutory authority, given either expressly or by implication. *Dodge v. Johnson*, 210 Ky. 843, 276 S.W. 984 (1925).

KRS 89.440, in providing for the manner of nomination and election of commissioners in cities of the second class, contains no express provision that would permit the contest of any primary election for such office, nor does it by implication grant such authority.

KRS 120.055 outlines the procedure that must be followed for the contest of a primary election. Parties permitted to contest such primary elections are said to be those candidates for the nomination to office at a primary election held under the provisions of KRS 118.015 to 118.035 and KRS 118.105 to 118.255. However, KRS 118.105 (4) provides:

"This chapter does not apply to candidates for * * * commissioner in cities of the fourth class operating under the commission form of government and in cities of the second, third or fourth class operating under the city manager form of government."

Hence, there is absolutely no statutory authority for the contest of a primary election for commissioner of a city of the second class with the city-manager form of government.

The judgment is affirmed.

Reed. C.J., and Clayton, Jones, Palmore, Stephenson, and Sternberg, JJ., concur.

Lukowsky, J., not sitting.

ATTORNEY FOR APPELLANT:

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Covington, Kentucky 41011

ATTORNEYS FOR APPELLEES:

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Covington, Kentucky 41011

IN THE
SUPREME COURT OF THE UNITED STATES
WINTER TERM, 1975

Supreme Court, U. S.
FILED

DEC 27 1975

JOHN H. HARVEY, CLERK

No. 75-822

EDDIE THOMPSON, JR.,
Petitioner,

vs.
KENTON COUNTY BOARD OF
ELECTION COMMISSION, ET AL.,
Respondents.

MOTION TO DISMISS

RICHARD S. NELSON
Atty. for Respondent,
James Simpson
11 West Sixth Street
Covington, Kentucky 41011
(606) 291-1511

I certify that a copy of the foregoing motion has been
served by the United States mail upon:

Petitioner:

Mr. Eddie Thompson, Jr.
736 Highland Avenue
Covington, Kentucky 41011

Respondents:

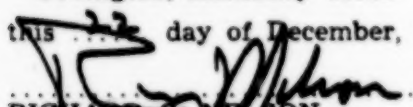
Hon. Joseph T. Condit
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Covington, Kentucky 41011
Hon. John R. Elfers
City-County Building
Covington, Kentucky 41011
Mr. William Martin
242 East Robbins Street
Covington, Kentucky 41011

Hon. Robert E. Ruberg
P.O. Box 187, 600 Greenup Street
Covington, Kentucky 41012
Hon. Philip Taliaferro
1 West Sixth Street
Covington, Kentucky 41011

Circuit Court:

Judge Daniel J. Goodenough
Third Division, Kenton Circuit Court
City-County Building
Covington, Kentucky 41011

this 22 day of December, 1975.


RICHARD S. NELSON
Attorney for Respondent, Simpson

IN THE
SUPREME COURT OF THE UNITED STATES
WINTER TERM, 1975

No. 75-822

EDDIE THOMPSON, JR.,
Petitioner,

vs.

KENTON COUNTY BOARD OF
ELECTION COMMISSION, ET AL.,
Respondents.

MOTION TO DISMISS

Comes now the Respondent, James Simpson, through counsel, pursuant to Rule 16 (1) (a) of the Revised Rules of the Supreme Court of the United States, and states as follows:

1) Petitioner's action was dismissed by the Hon. Judge Daniel Goodenough of the Kenton Circuit Court of the State of Kentucky, Case Number 28573, by Order dated June 27, 1975. Basis for his holding was K.R.S. 118.105 (4), which shows a lack of any statute permitting the contest of a primary commissioner's election in a city of the second class with the city-manager form of government. His decision was unanimously affirmed in an opinion handed down by the Kentucky Court of Appeals, Case Number 75-613, rendered September 19, 1975. Rehearing was denied by that court on October 29, 1975.

2) Petitioner seeks review by this court pursuant to 28 USC 1257 (2), while the facts as presented do not justify potential jurisdiction under that section. Petitioner's real issue is a lack of state statutory authority to contest such an election, while 28 U.S.C. 1257 (2) refers only to a state statute being upheld which is repugnant to the U.S. Constitution. Furthermore, respondent respectfully submits that petitioner's original notice of appeal, filed October 7, 1975, failed to comply with Rule 13 (2), Rule 23 (1) (b) (iii) and Rule 15 (1) (b) (i) by citing a non-existent statute; and that said notice of appeal was filed prior to becoming a final judgment as is required for review. For all the above reasons, petitioner's request for certiorari under 28 USC 2103 should also be denied.

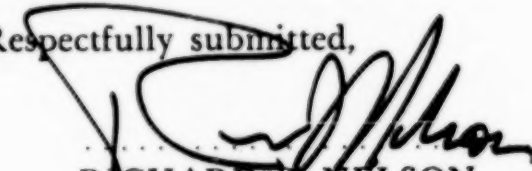
3) Assuming Petitioner has raised a valid constitutional question, which assumption this Respondent expressly denies, it is most strenuously suggested that the Petitioner has failed to state a cause of action against this Respondent or a cause of action for which relief can be granted from this Respondent.

4) It is respectfully submitted that this Respondent was not a candidate in the election in question and has never had any relief requested of him throughout this entire proceeding. In such a case where relief is neither requested nor existent, this Respondent maintains that it is extremely unjust for a party in his position to incur the additional expenses necessary for further pleadings in this Court, such as for printed copies and other costs to be incurred.

WHEREFORE, Respondent requests:

- 1) That the Petition for Appeal and Certiorari be denied.
- 2) That Respondent, Simpson, be dismissed as a party or as a purported party to this action.
- 3) For all other proper relief.

Respectfully submitted,



RICHARD S. NELSON

Attorney for Respondent, Simpson

11 West Sixth Street
Covington, Kentucky 41011
(606) 291-1511

COUNSEL OF RECORD

Pursuant to Rule 39 (2), below are listed the printed names of counsel of record:

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Hon. John R. Elfers
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Hon. Philip Taliaferro
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Circuit Court:

Judge Daniel J. Goodenough
Third Division, Kenton Circuit Court
City-County Building
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